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21 **UNITED STATES DISTRICT COURT**

22 **NORTHERN DISTRICT OF CALIFORNIA**

23 **SAN FRANCISCO**

24 LocusPoint Networks, LLC,
25 a Delaware Limited Liability Company,

26 Plaintiff,

27 v.

28 D.T.V. LLC,
a Wyoming Limited Liability Company,

Defendant.

Case No. 3:14-cv-01278-JSC

**JOINT CASE MANAGEMENT
STATEMENT**

Hearing Date: August 7, 2014

Time: 1:30 PM

Place: Courtroom F, 15th Floor

Judge: Hon. Jacqueline Scott Corley

LocusPoint Networks, LLC ("LPN") and D.T.V. LLC ("DTV") submit this Joint Case Management Statement in compliance with the Court's orders of March 20 and July 25, 2014, D.E. #5, #33, the Standing Order for All Judges of the Northern District of California regarding case management statements, and Civil Local Rule 16-9.

1 **I. JURISDICTION AND SERVICE**

2 This court has subject matter jurisdiction under 28 U.S.C. § 1332(a)(3) because DTV is a
3 citizen of Florida, LPN is a citizen of foreign countries and of states other than Florida, and the
4 amount in controversy exceeds \$75,000. All parties to this action have been served. D.E. #9.

5 **II. FACTS**

6 Relevant allegations from the Complaint are as follows:

7 DTV, a Wyoming LLC, owns and operates WPHA-CD ("WPHA"), a television station in
8 Philadelphia, Pennsylvania, that holds a Class A license from the Federal Communications
9 Commission ("FCC").

10 In December 2006, DTV did not allow an FCC agent access to inspect the main studio of
11 WPHA, as FCC rules require. DTV did not respond to subsequent communications from the
12 FCC regarding WPHA. On June 15, 2007, the FCC issued a letter of inquiry to DTV. In August
13 and September 2011, FCC agents were again denied access to inspect WPHA's main studio.

14 On October 26, 2012, DTV and LPN executed an Asset Purchase Agreement ("APA")
15 under which LPN agreed to purchase WPHA's assets, including its Class A license. Assigning a
16 Class A license requires FCC consent. Thus, DTV represented in the APA, among other things,
17 that WPHA was not the subject of any FCC complaints or investigations and that WPHA had
18 fully complied with all FCC rules. DTV did not inform LPN that it had denied FCC agents
19 access to inspect WPHA's studio, or that those denials were the subject of an FCC inquiry.

20 LPN first learned of these matters at an FCC meeting on February 7, 2013. At that
21 meeting, the FCC invited DTV to submit information to address its concerns. LPN encouraged
22 DTV to do so because the APA obligated DTV to, among other things, "promptly provide all
23 information and documents requested by the FCC."

24 DTV did not submit a memorandum to the FCC until May 23, 2013. It contained two
25 sentences about WPHA's failures to permit inspection. Meanwhile, on June 11, 2013, DTV's
26 sole member told LPN that he wanted to "explore other options" unless the APA closed by
27 September 1, 2013, when DTV could exercise a termination right under the APA.

28 On July 26, 2013, the FCC Enforcement Bureau offered DTV another chance to present

1 facts about WPHA's August and September 2011 denials of access to FCC field agents. LPN
 2 asked DTV to submit the additional facts that the FCC requested. DTV declined. Instead, DTV
 3 stated that it intended to argue that the FCC had previously tolerated failures to permit inspection.
 4 On August 5, 2013, DTV refused LPN's request that the parties extend the APA's September 1,
 5 2013 termination-option date to allow the FCC time to resolve its inquiry and renew and consent
 6 to the assignment of WPHA's Class A license. On August 15, 2013, DTV submitted its
 7 memorandum to the FCC regarding a proposed remedy for WPHA's August and September 2011
 8 denials of access to FCC field agents. On August 24, 2013, LPN again requested that the parties
 9 extend the September 1, 2013 termination-option date. DTV again declined.

10 DTV disputes the allegations of the Plaintiff's Complaint. DTV sent LTV a notice of
 11 termination of the APA on March 11, 2014.

12 **III. LEGAL ISSUES**

13 The parties disagree whether DTV breached the APA. *See Greenstar, LLC v. Heller*,
 14 934 F. Supp. 2d. 672, 686 (D. Del. 2013). The legal issues center on whether DTV breached its
 15 obligations under the APA:

- 16 • to "diligently prosecute the FCC Application and otherwise use their best efforts to
 17 obtain the FCC Consent as soon as practicable," APA § 5.1;
- 18 • to "cooperate with the FCC in connection with obtaining the FCC Consent," APA
 19 § 5.2;
- 20 • to "promptly provide all information and documents requested by the FCC in
 21 connection therewith," APA § 5.2; and
- 22 • to "cooperate fully with the other in taking any commercially reasonable actions
 23 (including to obtain the required consent of any governmental instrumentality or
 24 any third party) necessary to accomplish the transactions contemplated by this
 25 Agreement," APA § 9.1.

26 LPN also contends that DTV breached its representations under the APA that:

- 27 • "there are no complaints or proceedings pending or threatened before the FCC
 28 relating to the operation of [WPHA]," APA § 7.4(b);

- 1 • WPHA was “operating in compliance with the terms and conditions of the FCC
- 2 Licenses, the Communications Act and the current rules, regulations and policies
- 3 of the FCC applicable to [WPHA] in all material respects,” APA § 7.4(c);
- 4 • DTV “has not received any notice asserting any noncompliance with any
- 5 applicable statute, rule or regulation, in connection with the operation of [WPHA],
- 6 and, to [DTV’s] knowledge, no investigation is pending or threatened regarding
- 7 any such matter,” APA § 7.8; and
- 8 • “there are no . . . legal proceedings, claims or governmental investigations pending
- 9 against, or, to [DTV’s] knowledge, threatened against[] [DTV] relating to or
- 10 affecting [the APA] or the transactions contemplated hereby or [WPHA] Assets,
- 11 nor, to [DTV’s] knowledge, is there any basis for any such . . . legal proceeding,
- 12 claim or government investigation,” APA § 7.10.

13 The parties also disagree whether DTV’s termination under section 15.1(e) of the APA is
 14 valid because it was the product of DTV’s breaches. *See W & G Seaford Assocs., L.P. v. E. Shore*
 15 *Markets, Inc.*, 714 F. Supp. 1336, 1341 (D. Del. 1989) (“Delaware courts follow the principle that
 16 a party who wrongfully prevents a thing from being done cannot avail itself of the
 17 nonperformance it has occasioned.”); *accord Wavedevision Holdings, LLC v. Millennium Digital*
 18 *Media Sys., LLC*, C.A. No. 2993-VCS, 2010 WL 3706624 (Del. Ch. Sept. 17, 2010).

19 This case also presents the issue whether specific performance should be ordered as the
 20 parties agreed in Article 15.2(b) of the APA. *See Gildor v. Optical Solutions, Inc.*, 2006 Del. Ch.
 21 LEXIS 110, at *37 (Del. Ch. June 5, 2006).

22 **IV. MOTIONS**

23 DTV’s Motion to Dismiss, filed April 29, 2014, is the only pending motion. No
 24 additional non-dispositive motions are currently anticipated.

25 **V. AMENDMENT OF THE PLEADINGS**

26 LPN does not expect to amend its pleadings to add parties or claims, and DTV has not
 27 filed any pleadings. In accordance with Federal Rule of Civil Procedure 12(a)(4)(A), DTV will
 28 file any answer within 14 days of when the Court decides its Motion to Dismiss.

VI. EVIDENCE PRESERVATION

The parties have taken reasonable steps to preserve potentially relevant communications and documents and agree that, should any issues arise regarding a party's evidence preservation, the parties will meet and confer in good faith to resolve them.

VII. DISCLOSURES

The parties have not yet exchanged Rule 26(a) disclosures. The parties have proposed an August 14, 2014 deadline for the exchange of initial disclosures in Section XVII below.

VIII. DISCOVERY

No discovery has been taken to date. The parties do not anticipate the need to limit or modify the discovery rules of the Federal Rules of Civil Procedure.

XI. RELIEF

LPN seeks an order for specific performance of the APA.

XII. SETTLEMENT AND ADR

The parties believe that settlement is possible. The parties met for an ADR Phone Conference on July 23, 2014, in accordance with the Order Setting Initial Case Management Conference and ADR Deadlines, D.E. #5. Both parties have complied with ADR Local Rule 3-5.

Key discovery and motions necessary to position the parties to negotiate a settlement include DTV's motion to dismiss, the exchange of initial disclosures, and the production of DTV's communications with the FCC and with WPHA regarding compliance with FCC regulations.

XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

Both parties consent to magistrate judge jurisdiction, including trial and entry of final judgment. D.E. #11, #17.

XIV. OTHER REFERENCES

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

XV. NARROWING OF ISSUES

The parties anticipate being able to narrow issues by stipulation or motion, such as issues

1 pertaining to the authenticity and admissibility of certain documents and exhibits.

2 **XVI. EXPEDITED SCHEDULE**

3 The parties do not believe that this case can be handled on an expedited basis with
4 streamlined procedures.

5 **XVII. SCHEDULING**

6 The parties jointly propose the following schedule for discovery, dispositive motions, and
7 trial.

8 Exchange of Rule 26(a) Initial Disclosures	August 14, 2014
9 Service of Initial Document Requests	August 28, 2014
10 Completion of Document Production and Written Party 11 Discovery	November 24, 2014
12 Completion of Depositions	January 9, 2015
13 Deadline for Dispositive Motions	February 13, 2015
14 Deadline for Oppositions to Dispositive Motions	March 12, 2015
15 Deadline for Replies to Dispositive Motions	April 10, 2015
16 Hearing on Dispositive Motions	April 30, 2015
17 Pretrial Conference	June 12, 2015
18 Trial Start Date	June 22, 2015

19 **XVIII. TRIAL**

20 LPN has demanded a jury trial for all issues so triable. The parties estimate that the trial
21 will take approximately 5 days.

22 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

23 LPN filed its Local Rule 3-15 disclosure on March 15, 2014. D.E. #4. Entities owning
24 10% or more of LPN include BTO LPN Holding LLC. Other individuals and entities with a
25 financial interest in LPN include William deKay, Ravi Potharlanka, Kyle Detwiler, Wayne
26 Berman, Edward Rimland, Jasvinder Khaira, David Blitzer, Thomas Scott, Keith Kaczmarek,
27 Blair Levin, Richard Lynch, and Jack Plating.

1 Individuals and entities holding an interest that could be substantially affected by the
2 outcome of the proceeding include Patrick Communications L.L.C.

3 DTV has not filed a Local Rule 3-15 disclosure, but DTV represents that the sole owner of
4 DTV is Randolph Weigner.

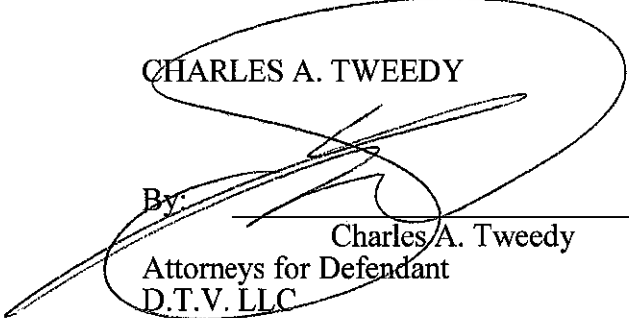
5 Dated: July 31, 2014

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9 By: /s/ B. Andrew Bednark
10 B. Andrew Bednark
11 Attorneys for Plaintiff
12 LocusPoint Networks, LLC

13 Dated: July 31, 2014

14 CHARLES A. TWEEDY

15 By: 
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